IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No : 23478 of 1998

Between:

Gannarapu Sarayya, S/o. Kattayya,
R/o 20/1541, Fort, Warangal (East).

..... PETITIONER

AND

1 Deputy Inspector General of Police ,
Warangal.
2 The Superintendent of Police ,
Warangal.
3 The A.P.Admn.Tribunal, rep.by its Registrar,
Purana Haveli, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or writ more particularly one in the nature of writ of Certiorari calling for the records pertaining to O.A.No.45751/90 on the file of the A.P.Admn.Tribunal, Hyderabad and quash the same declaring the said orders and the orders of the 1st respondent and second respondent as illegal, arbitrary unsustainable unwarranted unjust, highly excessive apart from being ultravires to the authority of the second respondent herein and consequently direct the respondents 1 & 2 to reinstate the petitioner into service as Police Constable with all consequential benefits such as back wages , promotion, increments etc.

Counsel for the Petitioner: SMT.CH.SUJATHA

Counsel for the Respondents.: GP FOR HOME

The Court made the following:

O R D E R:(Per Hon'ble Sri Justice G.Bikshapathy, J)

This writ petition is filed challenging the order passed by the A.P. Administrative Tribunal in O.A.No.45751 of 1990, dated 23-04-1998.

2. The petitioner is the applicant before the Tribunal. He was working as Police Constable. He was appointed in
01-06-1975. While so, when he was stationed at Narsampeta Police Station, he requested the Officer In-charge for grant of leave as his wife was seriously ill at Warangal and he was orally granted leave for two days. Thereafter, the petitioner could not return and sought for further extension of leave. However, the petitioner reported back for duty on 11-9-1987 by submitting medical certificate issued by a private doctor. The petitioner was placed under suspension pending enquiry. A charge sheet was issued on 11-9-1997 alleging that he was unauthorizedly absent from 15-4-1987 to 11-9-1987. Ultimately, the enquiry officer found the petitioner guilty of the charges, and finally the disciplinary authority imposed the punishment of removal from service by an order dated 06-05-1989. The appeal preferred by the petitioner was also dismissed. Therefore, he filed O.A No.45751 of 1990.

3. The learned Tribunal after considering the contentions raised before it, held that there was no procedural irregularity in conducting the enquiry and upheld the order of punishment by dismissing the O.A. Against the said order, the present writ petition has been filed.

4. The learned counsel for the petitioner submits that the second-respondent is not a competent authority and according to the provisions of the A.P (Telangana Area) District Police Act, 1329 F, the Director General District Appeals is only a competent authority and therefore, the order itself is without jurisdiction. Further, the learned counsel would submit that the enquiry was not conducted in a proper manner and

that the provisions of A.P.C.S (CCA) Rule, 1963 are not applicable to the case of the petitioner. The learned counsel would also submit that the misconduct alleged against the petitioner is that he was unauthorizedly absent from service, and the punishment imposed is too severe. Therefore, the Tribunal ought to have reduced the punishment.

5. We have heard the learned Government Pleader also.

6. We are not inclined to deal the provisions of A.P (Telangana Area) District Police Act, 1329 F. The petitioner did not raise this issue before the Tribunal and similarly, the applicability of A.P.C.S (CCA) Rules are also not pleaded before the Tribunal. Therefore, we cannot allow the writ petition to press the above contentions in the present writ petition.

7 . The only issue that arises for consideration is whether the action taken by the Department is valid and in accordance with rules and if so, whether the punishment is proportionate to the alleged gravity of misconduct.

8 . We have gone through the material placed before this Court and we find no procedural irregularity. The petitioner was given sufficient opportunity to defend his case. Therefore, the procedure as adopted by the department is quite legal

9 . The further issue that arises for consideration is whether the punishment of removal from service is justified in the circumstances of the case.

10. It is now well settled that the order of punishment from removal of service cannot be interfered with by this Court unless it shocks the conscience of the Court, or if there are any procedural irregularities, violating the principles of natural justice. In the instant case, the petitioner was charge sheeted for the unauthorized absence from 15-4-1987 to 11-9-1987 and the misconduct is not so serious as to warrant removal from service. The absence is only for a period of above 5 months. Further we find that there were no other punishments throughout his service.

11. Under those circumstances, we find that the punishment of removal from service is grossly disproportionate to the gravity of misconduct. Accordingly, we set aside the order of punishment and convert the punishment to that of compulsory retirement. Accordingly, the order of the Tribunal is modified, substituting punishment of compulsory retirement in the place of the order of removal from service. The respondents are directed to release the benefits, if any, to the petitioner,

in view of the modifications of punishment to that of voluntary retirement.

12. Accordingly, the Writ Petition is disposed of. No costs.

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(**G.BIKSHAPATHY, J)**

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(**P.S.NARAYANA, J)**

Dated 12th April, 2005

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To

1 Deputy Inspector General of Police , Warangal.
2 The Superintendent of Police , Warangal.
3 The Registrar, A.P.Admn.Tribunal, Purana Haveli, Hyderabad.

4. Two CCs to GP for Home, High Court Buildings, Hyderbad(OUT).

5. Two CD copies.